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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/966,746	10/01/2001	Maurice Zauderer	1821.0060001/EKS/AJK	3613
28393	7590	12/03/2003	EXAMINER	
STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.			LUCAS, ZACHARIAH	
1100 NEW YORK AVE., N.W.			ART UNIT	
WASHINGTON, DC 20005			PAPER NUMBER	

1648

DATE MAILED: 12/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/966,746	Applicant(s) ZAUDERER, MAURICE	
	Examiner Zachariah Lucas	Art Unit 1648	

--The MAILING DATE of this communication appears on the cover sheet with the corresponding address--

THE REPLY FILED 21 October 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.


Claim(s) objected to: _____.


Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____.

Continuation of 5. does NOT place the application in condition for allowance because: it does not demonstrate that the Applicant provided an enabling disclosure for the claimed invention. While the two references identified by the Applicant do demonstrate that there are proteins that are upregulated during infection by certain viruses, and show that certain of these proteins are targets of autoimmunity in the hosts, neither of the references indicates that such proteins are in fact potential vaccine targets. Each of the references indicates that the "consequence of these overabundant self peptides is currently unknown." Hickman, page 26. Further, the Herberts reference further states that the autoreactive cells activated by viral infections "could help clear the virus by eliminating infected cells," or "may also be immunopathogenic by initiating autoimmunity." Herberts, page 53. Thus, the references submitted by the Applicant in support of their argument actually demonstrate the unpredictability and the lack of understanding in the art surrounding the Applicant's invention. In particular, they demonstrate that those in the art would not know how to use any gene products identified by the Applicant's method as vaccines, or even, without more, be lead to believe that such upregulated proteins were potential vaccine targets. From these references, it is apparent that one skilled in the art would not know how to make or use vaccines based upon the identification of upregulated proteins by the Applicant's method because they would not know whether such proteins are effective for inducing a protective or a pathogenic response. In view of the above, the outstanding enablement rejection of the claims is maintained for the reasons of record.


Z. Lucas
Patent Examiner


JAMES HOUSEL 12/1/03
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